

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
The Missoula Plan Intercarrier)	CC Docket No. 01-92
Compensation Reform Plan)	

REPLY COMMENTS
OF THE
OREGON TELECOMMUNICATIONS ASSOCIATION
AND
WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

January 5, 2007

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Boulevard SW
Olympia, WA 98512
(360) 956-7001
Fax (360) 753-6862

SUMMARY

The Oregon Telecommunications Association (“OTA”) and the Washington Independent Telephone Association (“WITA”) provide these Reply Comments in response to the opening comments concerning the Missoula Plan’s proposed interim process for addressing phantom traffic issues (referred to for convenience as the “Interim Plan”). In response to the arguments that new rules are not needed to address the phantom traffic issue, OTA and WITA offer support for the Interim Plan as a small, but significant step forward in addressing phantom traffic issues. In doing so, OTA and WITA also point to areas in which the Interim Plan’s proposed process requires clarification.

This step of addressing phantom traffic is “small” only in the context of addressing intercarrier compensation as a whole. OTA and WITA, consistent with the comments they have joined in earlier, urge the Commission to move forward in addressing intercarrier compensation reform through the Missoula Plan with the minor modifications OTA and WITA have recommended.

On the specific elements of the phantom traffic proposal, OTA and WITA urge that the Commission’s process for negotiation of traffic exchange agreements between CMRS providers and incumbent local exchange carriers (ILECs) in the T-Mobile decision should be explicitly expanded to include traffic exchange agreements between competitive local exchange companies (CLECs) and ILECs.

OTA and WITA also underscore the need to ensure that there is an explicit exception for negotiated agreements between carriers, and that it be made clear that the proposed interim process constitutes default rules, not rules that must apply in every instance.

Further, OTA and WITA request clarification of the role of the transit provider, in particular the role of the transit provider in charging for records. As currently written, the proposed interim process may provide a process that is not economically viable when the charges for records require that the terminating company purchase all records generated by the transit provider related to the terminating carrier.

OTA and WITA recommend that the Commission establish clear enforcement guidelines and processes.

OTA and WITA also offer two technical suggestions related to the way in which the language in the Interim Plan is presented.

INTRODUCTION

The Oregon Telecommunications Association (“OTA”)¹ and the Washington Independent Telephone Association (“WITA”)² welcome the opportunity to provide Reply Comments on the proposed interim process to address phantom traffic issues.³ In the Federal Communication Commission’s (Commission) Public Notice, the Commission sought comment on the Missoula Plan’s proposed interim process (“Interim Plan”) for addressing phantom traffic issues and the related proposal for the creation and exchange of call detail records. The Commission received a number of thoughtful comments on the proposal. In these Reply Comments, OTA and WITA will respond to some of the issues raised in the opening round of comments.

In recent years, every rural telephone company in the Pacific Northwest has experienced the phenomenon in which access minutes, those minutes identifiable as such and billable to interexchange carriers, have decreased. At the same time, those companies have seen a rapid increase in traffic for which records containing information sufficient to allow billing for call transport and termination are not provided. This growth in phantom traffic is rapid and unabated.

¹ All but one of the members of OTA qualify as a rural telephone company under the definition of that term contained in the Telecommunications Act of 1996. See, e.g., 47 U.S.C. §153(37). Although, another of those companies, Malheur Home Telephone Company, is affiliated with Qwest Corporation. The companies that are members of OTA which meet the criteria for rural telephone company are listed on Appendix A.

² All of the members of WITA qualify under the definition of rural telephone company. The members of WITA are set out on Appendix B.

³ These Reply Comments represent the views of OTA and WITA and their member companies generally. Not every member company necessarily supports each and every comment proffered.

PHANTOM TRAFFIC IS A REAL PROBLEM

Several CLECs, IP telephony providers and CRMS providers filed comments arguing, in essence, that the issue of phantom traffic was overblown and the Interim Plan is unnecessary or flawed.⁴ These arguments are inaccurate. The importance of addressing phantom traffic was succinctly stated in the opening round of comments by the United States Telecom Association:

“Phantom traffic” continues to be a fundamental problem. It deprives the telecommunications industry and consumers alike of revenues that are necessary both to promote continued network investment and to maintain service reliability. Precisely because of the phantom nature of this traffic, the exact magnitude of the problem is difficult to measure. But the negative consequences are clear, and this Commission’s intervention is urgently needed.⁵

CenturyTel echoes these comments:

...the existence of such [phantom] traffic prevents carriers from fully recovering intercarrier compensation payments they are owed while imposing direct costs in connection with the needs to police such traffic and to avoid network congestion. Phantom traffic also has implications for public safety and security at the local and national levels. It is consumers that ultimately suffer as a result, since phantom traffic impacts carriers’ ability to invest in networks and services and undermines their ability to ensure adequate facilities are in place to meet consumers’ evolving and expanding needs.⁶

National estimates place the level of phantom traffic in the neighborhood of twenty percent of all traffic.⁷ In those instances in Washington and Oregon where companies are able to measure the total amount of traffic terminating to them over access trunks, the amount of non-billable traffic (where call message detail sufficient for billing is not provided) arriving over the common access trunks (most often Feature Group C) is in excess of fifty percent.

⁴ See, e.g., Comments of CTIA – The Wireless Association®, Comments of Feature Group IP, Comments of Cavalier Telephone, LLC, McLeodUSA Telecommunications Services, Inc., Pac-West Telecom, Inc., RCN Corporation.

⁵ Comments of the United States Telecom Association at p. 2 (footnotes omitted).

⁶ Comments of CenturyTel, Inc. at p. 2.

⁷ This estimate is repeated in several of the opening comments. See, e.g., Comments of the Independent Telephone and Telecommunications Alliance and Balhoff and Row, LLC at p. 3 and Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Eastern Rural Telecom Association at p. 6.

Two Washington companies have seen phantom traffic grow in a few short years from the twenty percent range to nearly fifty percent for one company and approaching sixty percent for the second company. This growth in traffic is illustrated by the tables set forth below.

**CHART 1
COMPANY A
FGC TERMINATING TRAFFIC**

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,587,726	1,682,758	4,080,112	1,077,742	1,507,614	605,016	26.98%	35.95%
2002	5,877,825	1,759,500	3,956,574	1,021,705	1,921,251	737,795	32.69%	41.93%
2003	6,604,722	2,085,805	3,795,144	1,039,990	2,809,578	1,045,815	42.54%	50.14%
2004	7,760,104	2,391,229	4,059,805	1,106,798	3,700,299	1,284,431	47.68%	53.71%
2005	8,984,187	2,747,121	4,403,902	1,155,886	4,580,285	1,591,235	50.98%	57.92%
2006*	8,577,468	2,768,245	3,665,906	1,021,837	4,911,562	1,734,408	57.26%	63.09%

*Ten months actual data annualized for comparison purposes.

**CHART 2
COMPANY B
FGC TERMINATING TRAFFIC**

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,718,675	1,657,584	4,713,652	1,289,940	1,005,023	367,644	17.57%	22.18%
2002	5,593,718	1,606,657	4,279,885	1,194,976	1,313,833	411,681	23.49%	25.62%
2003	7,012,272	1,852,954	4,725,073	1,300,679	2,287,199	552,275	32.62%	29.81%
2004	9,088,319	2,451,576	5,428,731	1,485,853	3,659,588	965,723	40.27%	39.39%
2005	9,115,501	2,575,478	5,035,672	1,456,633	4,079,829	1,118,845	44.76%	43.44%
2006*	8,457,054	2,667,282	4,402,836	1,410,241	4,054,218	1,257,041	47.94%	47.13%

*Ten months actual data annualized for comparison purposes.

In addition to this trend in Washington, one Oregon company that has been consistently measuring its traffic for several years has found the same traffic pattern to exist: phantom traffic now runs about fifty-six percent of the traffic on FGC trunks. The growth of phantom traffic is fast and seemingly unstoppable under current enforcement mechanisms.

The telecommunications industry in the states of Washington and Oregon undertook an investigation into the growing issue of phantom traffic. This investigation started in 2002 in Washington and 2003 in Oregon. The investigation in each state was conducted under Commission-sponsored "docket" processes.⁸ With the advent of the Oregon investigation, the investigations in the two states were combined.

⁸ What is meant by a Commission-sponsored docket process is that the Washington Utilities and Transportation Commission has established rules for the State of Washington under which industry members can participate in an investigation of a set of specific industry issues. The Oregon Public Utility Commission has adopted a similar process in Oregon. In both states, there are procedural rules in place which have been adopted by the respective state commissions that must be followed in the docket. These rules call for the output of any docket to be delivered to the respective state commission for consideration by that commission. The industry dockets can only make recommendations to the appropriate state commission and may not adopt any particular outcome.

As a result of the extensive process in both Washington and Oregon, reports were delivered to the Oregon Public Utility Commission, attached as Appendix C, and the Washington Utilities and Transportation Commission, attached as Appendix D.⁹ Both of these reports recommended certain steps that the respective state commissions might take to begin to address the issue of phantom traffic. The specific recommendations to the Washington and Oregon Commissions were as follows:

1. Adoption of “truth-in-billing” standards that require the population of identifying fields for carrier and jurisdiction by the originating carrier and which make it explicitly unlawful to alter, exclude, omit, or strip carrier and call identifying information.
2. Adoption of processes for challenging suspect interexchange traffic and penalizing responsible carriers.
3. Adoption of a default standard of billing the carrier delivering inaccurately labeled traffic for that traffic.
4. Adoption of a set of standards establishing the minimum requirements for delivery and exchange of traffic records.
5. Adoption of specific guidelines and timelines for investigating and resolving intercarrier traffic labeling disputes.
6. Adoption of a range of remedies to address violations of “truth-in-billing” standards.

The dilemma is that phantom traffic is not an isolated, intrastate issue. Rather, the problem of phantom traffic is an issue that cuts across jurisdictions and includes a large segment of interstate traffic. As a result, both the Oregon Public Utility Commission and the Washington Utilities and Transportation Commission determined that they should defer any action on the issue of phantom traffic to allow this Commission the opportunity to adopt a national standard that would apply uniformly to the issue.

⁹ The appendices to the reports submitted to the Oregon and Washington Commissions are not included in the attached Appendix C and Appendix D.

Thus, contrary to the arguments of those that would continue to be part of the phantom traffic problem -- instead of part of the solution -- by denigrating the size of the problem or the need for a cure, phantom traffic is a real problem, and a growing problem and must be addressed.

THE MISSOULA PLAN'S INTERIM PROPOSAL FOR PHANTOM TRAFFIC: RECOMMENDATIONS

OTA and WITA recommend that the Commission adopt the Interim Plan to address phantom traffic issues and the related proposal for the creation and exchange of call detail records, with clarifications, as described below. This is a small, but important first step to addressing phantom traffic. By requiring the creation and exchange of call detail records and the transmission of such records without alteration, at least the initial steps can be taken to resolve the phantom traffic issue.

As noted, OTA and WITA believe that there are some clarifications that are needed to the Interim Plan to be sure that the Interim Plan's intended results come to fruition. The clarifications suggested by OTA and WITA are as follows:

- The Commission should expressly extend the effect of the T-Mobile Order to traffic exchange agreements between CLECs and ILECs.
- The Commission should identify the Interim Plan as a set of default rules and clarify that the default rules do not affect traffic exchange agreements negotiated between the originating and terminating carriers.
- The Commission should clarify the obligation of the transit provider to provide records by originating carrier to the terminating carrier.

- The Commission should explicitly define enforcement mechanisms for violation of the interim phantom traffic proposed rules, including involvement of state commissions.
- Section IIIC.2 of the interim proposal should be clarified as explained in the comments below.

The following portion of these Reply Comments explains why OTA and WITA are recommending the clarifications described above.

1. The Commission Should Clarify The Interim Phantom Traffic Proposal To Explicitly Extend The Commission's T-Mobile Order To Traffic Exchange Agreements Between ILECs And CLECs.

The Commission's adoption of the T-Mobile Order¹⁰ opened the door for rural ILECs to bring CMRS providers to the table for the negotiation of traffic exchange agreements. As a result of the T-Mobile Order, rural ILECs in Oregon and Washington have been able to negotiate traffic exchange agreements with most major wireless providers.¹¹

Many of the commenters in the opening round either assume or state that the T-Mobile Order will be extended.¹² In the November 6, 2006, ex parte filing of the details of the interim proposal for phantom traffic, the Supporters of the Missoula Plan reference the need to extend the requirements of the T-Mobile Order.¹³ However, in the details of the Interim Plan, the extension of the T-Mobile Order is not discussed. OTA and WITA recommend that the Commission explicitly extend the provisions of the T-Mobile Order to apply to the negotiation of

¹⁰ Developing a Unified Inter-carrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005).

¹¹ RCC Minnesota, Inc. is the sole exception.

¹² See, e.g., Comments of the Small Company Committee of the Wisconsin State Telecommunications Association at p. 5-6, Comments of the National Exchange Carrier Association, Inc., et al. at p. 5, and Comments of the United States Telecom Association at p. 6-7.

¹³ November 6, 2006, ex parte entitled Industry Standards for the Creation and Exchange of Call Information at p. 2.

traffic exchange agreements between CLECs and ILECs. This can be done by incorporating into the Interim Plan the Missoula Plan rules for carrier notification, assessment of an interim traffic exchange rate and the requirement to negotiate such traffic exchange agreements (which are usually indirect traffic exchange arrangements). This process is described in the Missoula Plan in Section IV, Process for Obtaining an Interconnection Agreement, beginning at page 54.

2. The Commission Should Clarify That The Interim Proposed Rules Are Default Rules That Do Not Displace Existing Negotiated Agreements For The Exchange Of Traffic Between Originating And Terminating Carriers.

As noted above, the rural ILECs in Washington and Oregon have been able to negotiate traffic exchange agreements with CMRS providers as a result of the T-Mobile Order. The rules for the interim phantom traffic proposal should not displace those negotiated agreements.

It is, perhaps, assumed that the interim rules for addressing phantom traffic will not displace negotiated agreements. However, it is not crystal clear from a reading of the details of the Interim Plan that these rules are default rules that do not affect existing agreements. In the opening round of comments, the Minnesota Independent Coalition raised just such a concern. OTA and WITA support the comments of the Minnesota Independent Coalition that the Commission should clarify that the default rules do not override other contractual arrangements.¹⁴ The Western Telecommunications Alliance also raises this as an issue, pointing out that carriers should be able to keep contractual arrangements in place until those agreements are terminated.¹⁵

3. The Role Of The Transit Provider In Providing Call Detail Records Should Be Clarified To Require The Provision Of Records By Originating Carrier.

Portions of the Interim Plan dealing with the role of the transit provider raise various

¹⁴ See, Comments of Minnesota Independent Coalition at p. 2.

¹⁵ Comments of the Western Telecommunications Alliance at p. 4.

ambiguities. One of these deals with the role of the transit provider in providing call detail records to the terminating carrier and assessing a charge of \$0.0025 per record.

On this point, the Minnesota Independent Coalition offered a very cogent request for clarification in the opening round. The Minnesota Independent Coalition pointed out as follows:

Charges for creation and distribution of records should be limited to records: (i) that have been requested by other carriers; and (ii) that are useful to such other carriers in connection with a billing process. For example, it is possible that a Transit Provider ("Transit Provider") may be unable, or may choose not, to separate records that within the Scope of Traffic Covered from records for traffic outside of that scope, with the result being that many more records are produced and distributed than are within the Interim Plan scope or can be used by carriers receiving such records. It would be highly inappropriate for the Transit Provider to impose charges on other carriers for useless records simply because the Transit Provider was unwilling or unable to separate records for traffic within the Scope of Traffic Covered from other records. The Interim Plan should be clarified to address this issue.¹⁶

OTA and WITA support this request for clarification. In this region of the country, Qwest is most often the tandem provider. Qwest currently requires that records be purchased from it at the rate of \$0.0025 per record and requires carriers to purchase all records of very broad categories: all CLEC records or all CMRS provider records (or both). Given the way the network is usually configured, with traffic coming to the tandem provider over designated trunk groups from the originating carrier, Qwest should be able to identify each carrier by Trunk Number at the tandem and easily create records by carrier.

OTA and WITA echo the concern of the Minnesota Independent Coalition that "it would be highly inappropriate for the Transit Provider to impose charges on other carriers for useless records simply because the Transit Provider was unwilling or unable to separate records for

¹⁶ Comments of the Minnesota Independent Coalition at p. 3.

traffic....”¹⁷ Without this modification, a duty to purchase all records makes the proposal not an economically viable choice for terminating carriers in many cases.

4. The Commission Should Clarify The Enforcement Process That Would Apply To The Interim Plan.

Many of the commenters discussed the issue of enforcement, especially focusing on the need to identify how the Commission’s enforcement process will apply to the Interim Plan.¹⁸ Of course, some parties’ comments indicated that they wanted to avoid enforcement.¹⁹ The comments of the parties apparently engaging in practices that contribute to phantom traffic should not be given any weight when it comes to efforts to avoid the enforcement process.

OTA and WITA support the comments that suggest that the Commission provide guidance by clearly establishing an enforcement process. In particular, the suggestions of CenturyTel that enforcement provisions should specifically apply to carriers that violate call signaling rules in bad faith should be adopted.²⁰ The Minnesota Independent Coalition also points out that there can be an important role for state commissions in the enforcement proceedings.²¹ OTA and WITA agree that the Commission’s enforcement provisions should allow the opportunity to seek relief before the state commissions.

¹⁷ *Ibid.* It is interesting to note that in Qwest’s Comments, Qwest objected to any responsibility being placed on the tandem provider and argued that it should be allowed to charge for records at a “market based” rate. Comments of Qwest Communications International, Inc. at p. 8. As a near monopoly provider of tandem services, the rate established by Qwest for its records is not negotiable and is hardly a market based rate.

¹⁸ See, among others, Comments of the Rural Iowa Independent Telephone Association at p. 1-3 (“a strong and self-enforcing mechanism must be designed to stop non-complying originating and transiting carriers.”), and Comments of the Western Telecommunications Alliance at p. 3.

¹⁹ See, e.g., Comments of T-Mobile USA, Inc. at p. 9-13.

²⁰ Comments of CenturyTel, Inc. at p. 10.

²¹ Comments of Minnesota Independent Coalition at p. 4-5.

5. Section III.C.2 Should Be Clarified.

In the details for the Interim Plan provided by the November 6, 2006, ex parte, certain standards related to obligation of carriers were set out in Section III.C.2. There are three aspects of this obligation that should be clarified.

The first is the obligation to establish additional trunks. The provision states that if an ILEC elects not to create call summary information, it must “establish a separate trunk group to the Transit Provider’s tandem switch.” The ILEC is then required to utilize that trunk group for traffic that is not subject to the Commission’s requirements for jointly provided tariffed switch access service as prescribed in the MECAB Standards Document. There are two ambiguities about this statement. One is the question of which tandem is intended by the reference in the language. If there is a local/EAS tandem, then it would be appropriate to send non-access service traffic to the local/EAS tandem, not the access tandem. One of the major issues related to phantom traffic is the amount of “local” or EAS traffic that is flowing over the access tandem.

A second ambiguity about this sentence is the requirement that the ILEC “establish a separate trunk group....” This language suggests that a new trunk group should be created. However, in most cases where an EAS network is in place, the ILEC already has a separate trunk group in place. It is the experience of the OTA and WITA companies that those trunk groups are used by the rural companies only for EAS traffic when that traffic is originated from the rural ILEC.²² The Interim Plan should be clarified so that it is clear that where existing trunk groups for EAS traffic are in place, additional trunk groups need not be established.

The third aspect of Section III.C.2 which needs adjustment is the fact that, as written, the duties apply only to ILECs. The section should apply just as strongly to CLECs where the

²² However, rural ILECs receive jurisdictionally mixed traffic from Qwest over those trunk groups.

CLEC network would fit into the category of traffic that is described in this portion of the Interim Plan.

CONCLUSION

It is the position of OTA and WITA that if the Interim Plan is adopted, along with the proposal for the creation and exchange of call detail records and the transmission of such records without alteration, phantom traffic can begin to be addressed. Even more progress can be made if the Commission takes the next step and adopts the proposed rules in the Missoula Plan to address the ability to create interim compensation arrangements between indirectly interconnected originating and terminating carriers and, ultimately, traffic exchange agreements between such indirectly connected carriers through extension of the T-Mobile Order.

Of course, moving to a unified rate will ultimately remove the arbitrage incentive that may be behind a great deal of phantom traffic.

OTA and WITA hereby respectfully recommend that the Commission adopt the Interim Plan to address phantom traffic and the related proposal for the creation and exchange of call detail records, as clarified, and set forth above.

Respectfully submitted this 5th day of January, 2007.

Oregon Telecommunications Association
Washington Independent Telephone Association

By: 

Richard A. Finnigan
Law Office of Richard A. Finnigan

APPENDIX A

Oregon Telecommunications Association Participating Companies

Asotin Telephone Company
Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Cascade Utilities, Inc.
CenturyTel of Oregon, Inc.
CenturyTel of Eastern Oregon, Inc.
Colton Telephone Company
Eagle Telephone System, Inc.
Embarq Communications, Inc.
Gervais Telephone Company
Helix Telephone Company
Home Telephone Company
Midvale Telephone Exchange, Incorporated
Molalla Communications, Inc.
Monitor Cooperative Telephone Company
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Co.
Oregon-Idaho Utilities, Inc.
Oregon Telephone Corporation
People's Telephone Co.
Pine Telephone System, Inc.
Pioneer Telephone Cooperative
Roome Telecommunications Inc.
St. Paul Cooperative Telephone Association
Scio Mutual Telephone Association
Stayton Cooperative Telephone Company
Trans-Cascades Telephone Company

APPENDIX B

Washington Independent Telephone Association

Asotin Telephone Company
CenturyTel of Cowiche, Inc.
CenturyTel of Inter Island, Inc.
CenturyTel of Washington, Inc.
Ellensburg Telephone Company
Hat Island Telephone Company
Hood Canal Telephone Co., Inc.
Inland Telephone Company
Kalama Telephone Company
Lewis River Telephone Company, Inc.
Mashell Telecom, Inc.
McDaniel Telephone Co.
Pend Oreille Telephone Company
Pioneer Telephone Company
St. John Co-operative Telephone and Telegraph Company
Tenino Telephone Company
The Toledo Telephone Co., Inc.
Western Wahkiakum County Telephone Company
Whidbey Telephone Company
YCOM Networks, Inc.